

**Before the
Federal Communications Commission
Washington, DC 20554**

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| In the Matter of |) |
| Creation of a Low Power Radio Service |) MM Docket No. 99-25 |
| |) Report No. 2950 |
| |) MB Docket No. 07-172 |
| |) RM-11338 |
| |) FCC12-29 |

To: The Commission

Reply to Comments

In "Opposition to Petitions for Reconsideration" Prometheus Radio Project defends the Commission's one to a market cap. The defense states, in part that "The Commission indisputably provided notice with respect to its proposal to implement translator application caps, and solicited comment on various possible caps." While I do not dispute that the Commission discussed caps and invited comments on them, the discussion was held in the context of affording proper LPFM opportunities in spectrum limited markets. In the Notice of Proposed Rulemaking for the Third Report and Order, in fact, the Commission proposed to process all applications in non-spectrum limited markets. In the fourth NPRM, the commission did seek comment on proposals to limit trafficking, including asking if a one-to-a-market cap would be appropriate. In response, no comments proposed a one-to-a-market cap in non-spectrum limited markets, nor did the Commission indicate that they were about to enact such a policy.

The objection of lack of notice is because the Commission adopted a course of action that was completely different than any that was proposed. Because this course of action was not put forth before or during a comment window, there was no discussion at all on this particular action. I submit that the course taken by the Commission is far too sweeping to be considered a minor procedural, policy or practice modification. As such they should not be adopted without a proper comment period. I would further suggest that this proceeding is a poor place for the discussion because the one-to-a-market cap does not further the LCRA. A much better place for this discussion would be in a translator NPRM docket.

Elevation of LPFM above Translators:

Prometheus states that there is a disparity in the numbers of LPFM stations to translators. Because of this disparity, they claim that LPFM is in an inferior position that requires elevation in order to be co-equal with translators. There are many flaws in this argument starting with the fact that translators operate under different rules. Second, the translator service is much older, thus it naturally has more stations. The biggest drawback to Prometheus' line of thinking is what happens when LPFM stations/applications outnumber translators? Based on their logic, Prometheus should

agree that some adjustment will need to be made that will eliminate LPFM applications so that translators can have a more equal slice of the spectral pie.

The case for HD and AM:

Prometheus states that the advent of HD channels does not entitle broadcasters to additional analog spectrum. Indeed, it does not entitle them to anything. The rules do, however, clearly allow rebroadcast of HD on analog translators and there is a direct public benefit to making additional programming choices more available to the public than the limited numbers of HD radios currently available. The same is true for AM stations rebroadcast on translators. Care should be taken by the Commission not to impose rules that will disrupt the free market and thereby potentially limit the public's media choices by removing sources from translators.

It appears that the Commission and most of the LPFM proponents are concerned with the significant numbers of non-commercial translator applications owned by a relatively small number of licensees. It is pretty hard to justify multiple overlapping service contours by a single non-commercial licensee in a given market. This is because the presumption is that the same signal will be rebroadcast over all of the translators in an area. Even if true, this type of situation only applies to non-commercial operations because there are many more programming sources available for the commercial translators. As stated in previous comments, I would urge the Commission to open a comment window on a translator service NPRM and seek input there. Further, I would suggest that in the case of so-called speculative applications, the market will sort them out over time. Duplicative services are not economically viable and they will be sold to other interested broadcasters or go silent. The free market ensures some level of spectrum efficiency.

Respectfully Submitted,

Kyle Magrill